

### **REMARKS**

Applicant has studied the Final Office action dated January 8, 2009. Currently, claims 1-17, 21, and 22 are pending. Claims 1 and 21 have been amended and claim 20 has been canceled without prejudice. Claims 1 and 21 are independent claims. No new matter has been added as the amendments have support in the specification as originally filed. Further, it is believed that no new issue is raised by the present amendments to the claims.

It is submitted that the application, as amended, is in condition for allowance. Reconsideration is respectfully requested.

#### **Claim for Foreign Priority under 35 U.S.C. § 119**

Applicant appreciates the Examiner's acknowledgment of the Applicant's claim for foreign priority under 35 U.S.C. § 119 and indication that a certified copy of the priority document has been received.

#### **Amendments to the Claims**

Independent claims 1 and 21 have been amended in compliance with 37 C.F.R. § 1.116(b) to more clearly claim disclosed embodiments. In particular, independent claims 1 and 21 have been amended by incorporating the features previously recited in canceled claim 20 and recite that each of the five toe insert parts extends toward each of the five toe holes to cover at least a part of each of five toes, and each of the toe insert parts extends toward each of the toe holes to cover at least a part of each of five toes, respectively.

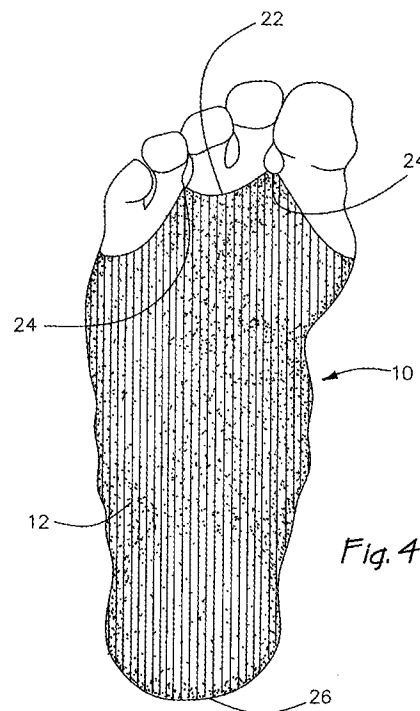
It is respectfully submitted that the claim amendments presented herein do not add any new matter or features and do not significantly alter the scope of the claims. Consequently, the claim amendments should not require any further search by the Examiner. Accordingly, entry of the amendments to the application, as an earnest attempt to advance prosecution, is respectfully requested.

### § 103 Rejections

Claims 1-4, 6, 7, 10, 12-17, and 20-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardiner (US 6,196,986) in view of Swallow et al. ("Swallow" US 4,021,860, in view of Huggins et al ("Huggins" US 7,051,457) and further in view of Corry (US 5,867,838). This rejection is respectfully traversed.

With this paper, claim 20 has been canceled without prejudice. It is, therefore, respectfully submitted that the rejection is moot with respect to claim 20 and it is respectfully requested that the rejection be withdrawn. Nevertheless, the rejection of claim 20 is discussed below to support patentability of amended independent claim 1.

With regard to the rejection of claim 20, which depends from independent claim 1, the Examiner asserts that Corry discloses that "each of the five toe insert parts ('838; (22)) extends toward each of the five toe holes defined by features (24) to cover at least a part of each of five toes," citing FIG. 4. The cited FIG. 4 of Corry is shown below.



According to the above shown FIG. 4 of Corry, contrary to the Examiner's assertion, five toe insert parts and the five toe holes are not disclosed in Corry. Further, according to the above shown FIG. 4 of Corry, each of the asserted five toe insert parts (22) does not extend toward each of the five toe holes. Furthermore, it is noted that no

part of each of five toes is covered, but each of the five toes is completely exposed in the above shown FIG. 4 of Corry.

Therefore, it is respectfully asserted that independent claim 1, as amended, which recites the features previously recited in canceled claim 20, is allowable over the cited combination of references as Corry fails to cure the deficiencies of Gardiner, Swallow and Huggins. For the similar reasons as discussed above with respect to independent claim 1, it is respectfully asserted that independent claim 21, which recites that each of the toe insert parts extends toward each of the toe holes to cover at least a part of each of five toes, also is allowable over the cited combination of references.

It is further respectfully asserted that claims 2-4, 6, 7, 10, and 12-17, which depend from independent claim 1, and claim 22, which depends from independent claim 21, also are allowable at least by virtue of their dependency from their respective allowable base claims.

Claims 5, 8, 9, and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardiner, Swallow, and Huggins, further in view of Brother et al. ("Brother" US 6,234,988). This rejection is respectfully traversed.

As asserted above, independent claim 1 is allowable over Gardiner, Swallow, Huggins, and Corry. Moreover, it is respectfully submitted that Brother, which has been cited for merely disclosing a foot protection device having a cushioning layer, fails to cure the above identified deficiencies of Gardiner, Swallow, Huggins, and Corry with respect to independent claim 1.

Accordingly, it is respectfully asserted that claim 1 is allowable over the cited combination of references. It is further respectfully asserted that claims 5, 8, 9, and 11, which depend from independent claim 1, also are allowable at least by virtue of their dependency from the allowable base claim.

### CONCLUSION

In view of the above remarks, Applicant submits that all pending claims of the present application are in condition for allowance. Reconsideration of the application, as originally filed, is requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned agent at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

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